

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBRA R. McCLENDON and U.S. POSTAL SERVICE,
POST OFFICE, Tulsa, Okla.

*Docket No. 96-1692; Submitted on the Record;
Issued May 14, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined on July 26, 1995 that the position of modified mailhandler fairly and reasonably represented appellant's wage-earning capacity as of May 12, 1995; and (2) whether appellant has established that she is entitled to an additional schedule award greater than the 28 percent award that she previously received for her right upper extremity.

On October 26, 1994 appellant, then a 39-year-old letter carrier, filed a notice of occupational disease and claim for compensation, alleging she suffered biceps tendinitis in the right arm and shoulder. The Office accepted the claim for right shoulder impingement syndrome and compensation for temporary total disability commenced.

On May 10, 1995 the employing establishment offered appellant a permanent limited-duty position as a modified mailhandler at an unchanged salary of \$17.12 per hour. Appellant accepted this position and began working on May 12, 1995.

On July 6, 1995 Dr. George S. Mauerman, appellant's treating physician and a Board-certified orthopedic surgeon, stated that "[A]fter reviewing the federal guidelines, this patient has 25 percent to the right upper extremity of permanent partial physical impairment...." He repeated this conclusion on an attending physician's report of the same date and on a work capacity evaluation form. In a separate report, Dr. Mauerman elaborated that appellant was six months removed from her original subacromial decompression on the right shoulder for impingement syndrome. He stated that she had a distal end clavicle resection. Dr. Mauerman noted that appellant's injury resulted in 90 degrees on flexion, 90 degrees on abduction, internal rotation to the buttock, external rotation of about 75 percent and a great deal of discomfort. Finally, he stated that the partial impairment was permanent.

On July 17, 1995 appellant filed her claim for a schedule award.

On August 7, 1995 the Office medical adviser indicated that Dr. Mauerman's opinion failed to meet its requirements because the physician did not clarify how he derived his impairment ratings.

In a decision dated July 26, 1995, the Office noted that appellant was reemployed as a modified mailhandler on May 12, 1995 with wages of \$684.80 per week. The Office found that this position fairly and reasonably represented her wage-earning capacity and terminated compensation benefits.

On October 2, 1995 Dr. Mauerman stated that he gave his final impairment rating on July 26, 1995 using the Fourth Edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He stated that if the Office needed further information it should schedule an appointment with another physician.

On October 27, 1995 the Office medical adviser attempted to utilize Dr. Mauerman's opinion to determine a right upper extremity impairment rating. The medical adviser determined that appellant had a 19 percent permanent impairment rating of her right upper extremity based on the available information. He noted, however, that he needed clarification from Dr. Mauerman as to how he obtained his impairment evaluations.

On November 30, 1995 the Office sought a second opinion from Dr. John Tompkins, a Board-certified orthopedic surgeon. In a report dated January 24, 1996, Dr. Tompkins reviewed appellant's history, x-rays, and the results of his physical examination. He stated that appellant had reached maximum medical improvement on July 6, 1995. Dr. Tompkins noted that a distal clavicle resection was performed on appellant's right shoulder and that pursuant to Table 27, page 61 of the A.M.A., *Guides*, this constituted a 10 percent impairment of the right upper extremity. He further found that appellant's shoulder demonstrated 55 degrees of abduction and 25 degrees of adduction, and that, therefore, pursuant to figure 41, page 44, of the A.M.A., *Guides* this constituted a 6 percent and 1 percent permanent impairment of the right upper extremity, respectively. Moreover, Dr. Tompkins found 60 degrees of limited external rotation and 20 degrees of limited internal rotation. Pursuant to figure 44, page 45 of the A.M.A., *Guides*, Dr. Tompkins determined this represented a 0 percent impairment for external rotation and a 4 percent impairment for internal rotation. Dr. Tompkins further found appellant had 80 degrees of flexion and 20 degrees of extension. He calculated that these limitations represented a 7 percent and 2 percent impairment pursuant to figure 38, page 43 of the A.M.A., *Guides*. Dr. Tompkins then added all the impairment calculations stemming from appellant's loss of motion equaling 20 percent with the 10 percent impairment calculation stemming from her distal clavicle resection to determine that appellant had a 30 percent permanent impairment of the right upper extremity.

The Office medical adviser subsequently reviewed Dr. Tompkins' report. He noted agreement with Dr. Tompkins findings that appellant suffered an impairment stemming from loss of motion in the shoulder totaling 20 percent and that appellant suffered an impairment due to her distal clavicle resection totaling 10 percent. The Office medical adviser, however, determined that these values must be combined using the combined values chart of the A.M.A., *Guides*, page 322. Consequently, he combined the 20 percent loss of motion impairment with

the 10 percent impairment due to her distal clavicle resection to find that appellant had a 28 percent permanent impairment of the right upper extremity.

In a decision dated February 15, 1996, the Office found that appellant had 28 percent loss of the right upper extremity.

Initially, the Board finds that the position of modified mailhandler to which appellant returned on May 12, 1995 fairly and reasonably represented her present wage-earning capacity.

In the present case, appellant had actual earnings as a modified mailhandler with the employing establishment beginning May 12, 1995. It was proper for the Office, in its July 26, 1995 decision, to use appellant's actual earnings as the basis for her loss of wage-earning capacity, as there is no evidence that appellant's actual earnings did not fairly and reasonably represent her wage-earning capacity effective May 12, 1995. This determination is consistent with Board precedent which provides that, generally, wages actually earned are the best measure of a wage-earning capacity, and that in the absence of evidence showing that they do not fairly and reasonably represent the injured employee's wage-earning capacity, they must be accepted as such measure.¹

Moreover, the evidence does not show that the modified mailhandler position was an odd lot or makeshift position designed for appellant's particular needs. It was an actual position that appellant worked and she has submitted no evidence to show such a position was seasonal, part time or temporary, or to otherwise establish that it was not a suitable measure of her wage-earning capacity.

The Board further finds that appellant failed to establish entitlement to a schedule award in addition to the 28 percent she previously received for her right upper extremity.

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations,³ set forth that schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment is to be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment.⁴

In obtaining medical evidence for schedule award purposes, the Office must obtain an evaluation by an attending physician which includes a detailed description of the impairment including, where applicable, the loss in degrees of motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment. The description must be in sufficient detail so that

¹ *Floyd A. Gervais*, 40 ECAB 1045 (1989).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

⁴ *Leisa D. Vassar*, 40 ECAB 1287 (1989).

the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁵ If the attending physician has provided a detailed description of the impairment, but has not properly evaluated the impairment pursuant to the A.M.A., *Guides*, the Office may request that an Office medical adviser review the case record and determine the degree of appellant's impairment rating utilizing the description provided by the attending physician and the A.M.A., *Guides*.⁶

In the instant case, appellant's treating physician, Dr. Mauerman, failed to provide a sufficiently detailed report which would enable the Office medical adviser to evaluate the report pursuant to the A.M.A., *Guides*. Consequently, the Office requested a second opinion from Dr. Tompkins, a Board-certified orthopedic surgeon. Dr. Tompkins noted that a distal clavicle resection was performed on appellant's right shoulder and that pursuant to Table 27, page 61 of the A.M.A., *Guides*, this constituted a 10 percent impairment of the right upper extremity. Dr. Tompkins then found an additional 20 percent impairment due to loss of motion in appellant's shoulder. He based this on the fact that appellant's shoulder demonstrated 55 degrees of abduction and 25 degrees of adduction, and that, therefore, pursuant to figure 41, page 44, of the A.M.A., *Guides* appellant had a 6 percent and 1 percent permanent impairment of the right upper extremity, respectively. He also found 60 degrees of limited external rotation and 20 degrees of limited internal rotation. Pursuant to figure 44, page 45 of the A.M.A., *Guides*, Dr. Tompkins determined this represented a 0 percent impairment for external rotation and a 4 percent impairment for internal rotation. Finally, he found appellant had 80 degrees of flexion and 20 degrees of extension. He calculated that these limitations represented a 7 percent and 2 percent impairment pursuant to figure 38, page 43 of the A.M.A., *Guides*. Dr. Tompkins then added all the impairment calculations stemming from appellant's loss of motion, equaling 20 percent, with the 10 impairment calculation stemming from her distal clavicle resection, to determine that appellant had a 30 percent permanent disability.

The Office medical adviser then reviewed Dr. Tompkins' reports. He noted agreement with Dr. Tompkins findings that appellant suffered an impairment stemming from loss of motion in the shoulder totaling 20 percent and that appellant suffered an impairment due to her distal clavicle resection totaling 10 percent. The Office medical adviser, however, properly determined that these values must be combined using the combined values chart of the A.M.A., *Guides*, page 322.⁷ Consequently, he combined the 20 percent loss of motion impairment with the 10 percent impairment due to her distal clavicle resection to find that appellant had a 28 percent permanent impairment of the right upper extremity.

As the Office medical adviser properly utilized the description of appellant's impairment provided by Dr. Tompkins and the fourth edition of the A.M.A., *Guides* to evaluate appellant's impairment, and there is no other rationalized medical evidence of record relevant to this issue, the Office properly determined that appellant only demonstrated entitlement to a schedule award of 28 percent of the right upper extremity.

⁵ *Joseph D. Lee*, 42 ECAB 172 (1990).

⁶ *Paul E. Evans, Jr.*, 44 ECAB 646 (1993).

⁷ A.M.A., *Guides* (4th ed. 1994) at p. 62.

The decisions of the Office of Workers' Compensation Programs dated February 15, 1996 and July 26, 1995 are affirmed.

Dated, Washington, D.C.
May 14, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member